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Anthony Herman
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

MUR # 6736

Re: Art Halvorson, Taxpayers for Art Halvorson Exploratory Committee

Dear Mr. Herman:

Pursuant to 2 USC § 437g(a)(1) and 11 CFR § 111.4, please accept this letter as a Complaint against Art Halvorson ("Halvorson") and the Taxpayers for Halvorson Exploratory Committee ("Committee") for operating in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Federal Election Commission ("FEC" or "Commission") regulations, and, more specifically, for violation of the testing the waters provisions set forth in 11 CFR 100.72(a) and 100.131(a) and, in effect, the registration requirements set forth in 11 CFR § 101.1.

1. Facts

Art Halvorson is effectively a candidate for the U.S. House of Representatives in Pennsylvania's 9th District for the 2014 election cycle. He has not yet filed a Form 2 Statement of Candidacy, but, rather, has been conducting a significant amount of activity associated with making such a decision, classifying it as "testing the waters" activity, as permitted under § 100.72(a) and 100.131(a).

Halvorson has established an exploratory committee, Taxpayers for Art Halvorson Exploratory Committee, to weigh his candidacy. The Committee has also created and published a website, which carries the domain name and URL address of www.ArtHalvorsonForCongress.com. The home page contains a banner with the title "Art Halvorson for Congress" and a full biography, as well as "volunteer" and "contribute" buttons comprised of the respective information for each. There are also tabs for news, issues, and a media gallery. The website is organized and well-developed, articulates detailed policy positions, facilitates monetary and volunteer support, and provides an infrastructure consistent with the standards of any full-fledged congressional campaign.

Halvorson has also participated in multiple speaking engagements and has conducted interviews with the press. One such interview, which appeared in the *Politics PA* blog on April 15, 2013, referred to Halvorson as a candidate and asserted that Halvorson stated "that he intends to

challenge [Congressman Shuster].”¹ Halvorson spoke freely and specifically on policy issues and openly criticized Congressman Shuster, the sitting Representative for the 9th District. He also stated, “I’m not declaring that I’m running, but I think the answer is going to be obvious.”² Halvorson spoke at the Blair County Tea Party rally later that afternoon.

II. Relevant Law

An individual becomes a candidate and triggers registration and reporting responsibilities under the Act when campaign activity exceeds \$5,000 in either contributions or expenditures. 2 USC § 431(2). A candidate must file a Form 2 Statement of Candidacy within 15 days of becoming a candidate. 2 USC § 432(c)(1). Within 10 days after it has been designated by the candidate, the principal campaign committee must register by filing with the FEC. 2 USC § 433(a).

The regulations permit an individual who has not decided to run for office to raise funds to “test the waters” and explore the viability of becoming a candidate. 11 CFR § 100.72, 11 CFR § 100.131. An individual solely engaging in testing the waters activities does not have to register or report as a candidate, even if the individual raises or spends more than \$5,000 on these activities. Testing the waters activities include conducting a poll, making telephone calls and traveling, but only if undertaken to determine whether an individual should become a candidate. 11 CFR § 100.72, 11 CFR § 100.131.

However, once an individual engages in campaign activity, if he or she has raised or spent more than \$5,000, the individual must register as a candidate with the FEC. Campaign activities include raising funds in excess of what could reasonably be expected to be used for exploratory activities, undertaking activities designed to amass campaign funds that would be spent after he or she becomes a candidate, or making statements that refer to the individual as a candidate. 11 CFR § 100.72. In addition, if the name of an individual’s testing the waters committee indicates that the candidate has already decided to run for Congress, this is also considered campaign activity. *See* Advisory Opinion 1981-32. In short, “once the public activities of the individual take on a partisan political quality which would indicate that a decision has been made” to run for office, the testing the waters exemption no longer applies, and the individual is subject to the registration and reporting requirements set forth by the Regulations. Advisory Opinion 1981-32 at 4.

III. Legal Analysis

The activities of Halvorson and the Taxpayers for Art Halvorson Exploratory Committee are believed to have exceeded the scope of permissible testing the waters activity under 11 CFR § 100.72(a) and 11 CFR § 100.131(a) and, therefore, would subject him to the registration and reporting requirements of 11 CFR § 101.1 once he meets the criteria of 11 CFR § 100.3.

The Committee has created and published an Art Halvorson for Congress title and web address, which, according to Advisory Opinion 1981-32, is considered campaign activity that triggers

¹ Gibson, Keegan, “Challenger Prepares Primary vs. Shuster,” PoliticsPA.com (April 15, 2013), available at <http://www.politicspa.com/challenger-prepares-primary-vs-shuster/47446/>.

² *Id.*

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registration and reporting requirements once the \$5,000 threshold is reached. The website's address, title, and content also indicate that preparations have been put in place for the transition to an authorized campaign committee. For instance, in addition to the "Art Halvorson for Congress" title banner, there are buttons that link to information on how to volunteer and where to mail contributions, as well as detailed descriptions of policy positions. Taking substance over form, Halvorson's website is, for all intents and purposes, operating as an authorized candidate committee site and is indicative that a private decision to run for Congress has already been made.

In addition to the blatant representation on the website, Halvorson's words and actions have indicated that he is no longer truly deliberating the candidacy, but is rather pursuing these activities "as a means of seeking some affirmation or reinforcement of a private decision he has already made." Advisory Opinion 1981-32 at 4. He has conducted interviews in which he is referred to as a candidate, has made strong assertions that indicate an imminent candidacy, and has been actively engaged in speaking roles at political events. Halvorson has, at the very least, created the perception that he has made the decision to challenge Congressman Shuster in 2014, despite the fact that a formal announcement has not yet followed. Under Commission regulations and guidance, this is sufficient to trigger the registration and reporting requirements applicable to all candidates once the \$5,000 threshold is exceeded.

Given the significant organization, infrastructure, and publicity Halvorson's "exploratory" efforts are comprised of, there is a near-certain likelihood that he has surpassed the \$5,000 candidacy threshold, and, if so, also failed to file a timely Form 2 Statement of Candidacy and, possibly, a Form 1 Statement of Organization. Accordingly, Halvorson's behavior is believed to be improper and inconsistent with both the letter and spirit of the testing the waters exemption. He should be held accountable for taking advantage of these provisions to simply delay the obligations of a candidacy for Congress.

IV. Conclusion

Upon information and belief, and based upon the facts relayed herein, Art Halvorson and Taxpayers for Al Halvorson Exploratory Committee are believed to have violated the Federal Election Campaign Act of 1971, as amended, and Federal Election Commission Regulations. Accordingly, I respectfully request that the Commission conduct an immediate investigation into these alleged violations outlined above and impose an appropriate remedy and sanctions as provided for by law.

The foregoing is correct and accurate to the best of my knowledge, information and belief.

Respectfully submitted,


William J. Habersroh

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City of Altoona, Blair County

My Commission Expires May 27, 2015

MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES